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SEAGATE TECHNOLOGY LLC

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

16 IN RE SEAGATE TECHNOLOGY LLC
LITIGATION

18 CONSOLIDATED ACTION

Case No. 3:16-cv-00523-JCS

**[PROPOSED] ORDER GRANTING
MOTION TO SEAL PORTIONS OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Date: February 9, 2018

Time: 9:30 a.m.

Place: Courtroom G

Judge: Hon. Joseph C. Spero

Second Consolidated Amended Complaint
filed: July 11, 2016

1 The Court has reviewed the Administrative Motion to File Documents Under Seal filed in
 2 connection with Plaintiffs' Motion for Class Certification and related documents (ECF Nos. 133,
 3 138-140). It has also reviewed the Declaration of Ronald Lane filed by Seagate Technology LLC
 4 (Seagate) in Support of the Administrative Motion to Seal. The Court rules as follows.

5 In this district, a party seeking to file a document under seal must comply with a two-prong
 6 requirement. The party must "(1) comply with Civil Local Rule 79-5; and (2) rebut the [] strong
 7 presumption in favor of access that applies to all documents other than grand jury transcripts or
 8 pre-indictment warrant materials." *Gaudin v. Saxon Mortg. Servs.*, 2013 U.S. Dist. LEXIS 82059,
 9 at *2 (N.D. Cal. June 11, 2013) (internal citations and quotations omitted).

10 The first prong requires that the party seeking to seal the document establish that (1) "the
 11 document or portions thereof is privileged or protectable as a trade secret or otherwise entitled to
 12 protection under the law; and (2) is narrowly tailored to seek sealing only of sealable material."
 13 *Id.* (citing Civil L.R. 79-5). "With respect to the second prong, the showing required for
 14 overcoming the strong presumption of access depends on the type of motion to which the
 15 document is attached." *Id.* With regard to dispositive motions, the "presumption can be overcome
 16 only if the party presents 'compelling reasons supported by specific factual findings that outweigh
 17 the general history of access and the public policies favoring disclosure.'" *Id.* (quoting *Damakana*
 18 *v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)).

19 The documents proposed to be filed under seal satisfy both the first and second prongs
 20 articulated by the Ninth Circuit: (1) Seagate has narrowly tailored its request to seal documents or
 21 redacted portions of only those documents which are "privileged or protectable as a trade secret or
 22 otherwise entitled to protection under the law" and (2) there are "compelling reasons" for Seagate
 23 to protect its sensitive business information from being released to competitors or to the public. In
 24 addition, there are compelling reasons for documents reflecting personal identifying information
 25 of Seagate's customers to be redacted of such information.¹

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 27
 28 ¹ Exhibit 26 contains the names, email addresses, and phone numbers of various Seagate customers.

A. Seagate's Documents Contain Trade Secrets

A trade secret is generally defined as information that (1) derives independent economic value from not being generally known to the public, and (2) is the subject of efforts to maintain its secrecy.” *La. Pac. Corp. v. James Hardie Bldg. Prods.*, 2013 U.S. Dist. LEXIS 94875, at *6 (N.D. Cal. July 8, 2013) (citing 18 U.S.C. § 1839(3); Cal. Civ. Code § 3426.1(d)). Documents detailing a party’s “business and pricing strategies” are treated as “trade secret[s]” or “confidential information.” *Stanislaus Food Prods. Co. v. USS-POSCO Indus.*, 2012 U.S. Dist. LEXIS 176346, at *6 (E.D. Cal. Dec. 11, 2012).

Additionally, documents dealing with a party’s internal business strategy and financial performance assessment are treated as protected trade secrets for the purposes of a sealing motion. *See In re NCAA Student-Athlete Name & Likeness Licensing Litig.*, 2013 U.S. Dist. LEXIS 68611, at *12 (N.D. Cal. May 13, 2013) (sealing document that was “marked confidential,” and which “reveal[ed] the internal strategy and decision making process” where “disclosure could harm [the requesting party’s] competitive standing”); *Apple, Inc. v. Samsung Elecs. Co.*, 2012 U.S. Dist. LEXIS 30562, at *2 (N.D. Cal. Mar. 6, 2012) (sealing “confidential business and marketing strategy,” which “was created at a significant cost to [the requesting party], and could be used by [the requesting party’s] competitors to its disadvantage, particularly because it discusses [the requesting party’s] customers”); *Muench Photography, Inc. v. Pearson Educ., Inc.*, 2013 U.S. Dist. LEXIS 115847, at *11-12 (N.D. Cal. Aug. 15, 2013) (sealing document which contained information relating to requesting party’s “product development efforts and business strategies to competitors,” when “competitors could use these strategies themselves—strategies that [the requesting party] spent significant resources to create”).

The Lane Declaration demonstrates that the documents Seagate proposes to seal contain information regarding product testing and development, internal business strategy and measures of performance, steps Seagate engages in to respond to consumer concerns and complaints, and its pricing data that it shares only with its authorized distributors. This information is sealable under Civil Local Rule 79-5 as protectable trade secret information and/or otherwise protectable by law. *See Gaudin*, 2013 U.S. Dist. LEXIS 82059, at *5.

B. There Are Compelling Reasons For Sealing The Documents

There are also “compelling reasons” to seal this information. *Gaudin*, 2013 U.S. Dist. LEXIS 82059, at *5. Seagate takes considerable effort to ensure all of this information is kept from the public. Lane Decl. ¶ 4. The information is also commercially sensitive and highly valuable to Seagate. *Id.* ¶¶ 4, 5, 9, 11, 14, 21. Should information regarding Seagate’s product development and market strategy become available to its competitors, such competitors could use the information to undercut Seagate, predict future strategies or practices, or re-structure their sourcing and product delivery methodologies in a way that would be harmful to Seagate’s profitability. *Id.*; see also *Stanislaus Food Prods. Co.*, 2012 U.S. Dist. LEXIS 176346, at *6; *NCAA Student-Athlete Name & Likeness Licensing Litig.*, 2013 U.S. Dist. LEXIS 68611, at *12; *Apple, Inc.*, 2012 U.S. Dist. LEXIS 30562, at *2; *Muench Photography, Inc.*, 2013 U.S. Dist. LEXIS 115847, at *11-12.

COMPELLING REASONS APPEARING THEREFORE, the Administrative Motion to Seal is GRANTED. The documents identified below shall remain filed under seal:

| Document | Portion(s) To Be Sealed |
|---|--|
| Declaration of Steve W. Berman in Support of Plaintiffs’ Motion for Class Certification | Exhibit 9 A portion of Exhibit 20, attached hereto as Exhibit A Exhibit 21 Exhibit 22 Exhibit 23 Exhibit 24 A portion of Exhibit 25, attached hereto as Exhibit B Exhibit 26 A portion of Exhibit 28, attached hereto as Exhibit C Exhibit 36 Exhibit 38 Exhibit 39 Exhibit 40 Exhibit 42 Exhibit 43 Exhibit 44 Exhibit 45 Exhibit 46 Exhibit 48 Exhibit 49 |

| Document | Portion(s) To Be Sealed |
|---|---|
| Portions of Declaration of Stefan Boedeker in Support of Plaintiffs' Motion for Class Certification | This document shall not be sealed. |
| Portions of Declaration of Andrew Hospodor in Support of Plaintiffs' Motion for Class Certification | The last two sentences of ¶ 2 ¶ 17 ¶¶ 23-212, and corresponding figures and footnotes |
| Plaintiffs' Motion for Class Certification | Portions of 1:19-1:21 (citing generally Hospodor Decl.) 2:5-2:6 (citing Hospodor Decl., ¶¶ 183-193, 176) 7:11-14 (quoting Berman Decl., Ex. 20) 8:5-12 (citing Hospodor Decl., ¶¶ 65, 83-84) 8:14 (citing Hospodor Decl., ¶ 135; Berman Decl., Ex. 21) 8:16-17 (citing Hospodor Decl., ¶¶ 118-169, 193) 8:23-9:6 (citing Hospodor Decl., ¶¶ 183-193, 176; Berman Decl., Exs. 22, 23) 9:13-14 (citing Hospodor Decl., ¶207) 9:15-16 (citing Hospodor Decl., ¶ 210; Berman Decl., Ex. 26) 13:8-10 & n.48 (Berman Decl., Exs. 20, 36) |

IT IS SO ORDERED.

DATED: _____, 2017

HON. JOSEPH C. SPERO
UNITED STATES MAGISTRATE JUDGE